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Memorandum

U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Subject: Substantive Changes to Final Rule: "Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used In Interstate Commerce"

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To: Docket FMCSA-2000-7017-29

Section 6(a)(3)(E) of Executive Order 12866, "Regulatory Planning and Review," requires us to identify the substantive changes between the draft document we provided to the Office of Management and Budget (OMB) for review and the final action.

We provided OMB a draft of the final rule on Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce ("Camionetas"). OMB forwarded the draft to Small Business Administration's Office of Advocacy (SBA).

The final version modifies the regulatory flexibility analysis (RFA) for this rulemaking, which was revised to reflect comments by SBA. The revised RFA section (attached) clarifies the numbers of small entities potentially affected by this rule, and its underlying economic assumptions for estimating the economic impact. However, in a memo to OMB (01/17/03), SBA expressed the view that it "is still troubled by the agency's certification that the rule will not have a significant economic impact on a substantial number of small entities."

ATTACHMENT

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations and proposed regulations. Based upon the information above, the agency anticipates that the economic impact associated with this rulemaking action will be $23,850,000 for the first year, and $20,184,234 for each subsequent year. The benefit of preventing as few as 8 of the 58 fatal accidents in 1998 involving large vans transporting 9 or more passengers at the time of the crash would outweigh the estimated costs. The agency estimates that each fatality prevented would be equivalent to a benefit of $3 million, based on the Department of Transportation's guidance memorandum on "Treatment of Value of Life and Injuries in Preparing Economic Evaluations." Preventing 8 single-fatality accidents per year would result in at least $24 million in benefits per year. Additional benefits would be achieved through reductions in injuries and property-damage only accidents involving small passenger-carrying CMVs.

For purposes of Executive Order 12866, this rulemaking does not impose an economic burden greater than $100 million on these motor carriers. Therefore, a full Regulatory Impact Statement is not necessary.

Regulatory Flexibility Act Analysis

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), FMCSA considered the effects of this regulatory action on small entities and determined that this final rule will not affect a substantial number of small entities that operate CMVs designed or used to transport between 9 and 15 passengers, for compensation, in interstate commerce. However, the agency believes the rule will have a significant impact on some of the small entities operating such vehicles.

FMCSA is requiring motor carriers that operate CMVs, designed or used to transport between 9 and 15 passengers, in interstate commerce, to be made subject to the safety-related operational FMCSRs when they are directly compensated for such services and the vehicle is operated beyond 75 air miles (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These motor carriers will be required to comply with 49 CFR parts 390, 391, 392, 393, 395, and 396. FMCSA estimates that this rule will affect 1,843 of the estimated 14,000 entities that operate CMVs designed or used to transport between 9 and 15 passengers for compensation, and that most, if not all, of these 14,000 businesses are small entities based on criteria established by the Small Business Administration (SBA).[2]

The estimate of 1,843 is based on the current number of for-hire motor carriers of passengers with active authority that operate only CMVs with a seating capacity of 15 passengers or less. Although the universe of for-hire motor carriers of passengers potentially subject to this rule consists of approximately 14,000 entities, we estimate that the final rule will apply to only the 1,843 carriers whose operations require interstate

[2] The SBA's Office of Size Standards publishes a list of Small Business Size Standards matched to the North American Industry Classification System (NAICS). The U.S. Office of Management and Budget (OMB) classifies approximately 1,000 activities as industries under NAICS. For each industry, except those in public administration, SBA has established a size standard. Industries are described in detail in North American Industry Classification System – United States, 1997. It can be found in many libraries or purchased from the National Technical Information Service, by calling (800) 553-6847 or (703) 605-6000. Subsector 485 of the NAICS covers transit and ground passenger transportation. SBA has established $6,000,000 in annual receipts as the maximum size for a small business for all of the classifications under this subsector (e.g., interurban and rural bus transportation, bus service, taxi service, limousine service, charter bus industry). Gross receipts are averaged over a firm's latest 3 completed fiscal years to determine its average annual receipts. "Receipts" means the firm's gross or total income, plus cost of goods sold, as defined by or reported on the firm's Federal Income Tax return. Therefore, only those motor carriers of passengers that averaged $6,000,000 or less in annual receipts for the past 3 fiscal years would be considered small businesses for the purposes of the regulatory flexibility analysis.

operating authority under the FMCSA's commercial regulations. Each of these motor carriers has on file with the FMCSA proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. This number may overstate the population of affected carriers since some of the licensed carriers may be exclusively operating equipment carrying less than 9 passengers. However, FMCSA's estimate does not include the following: (1) Motor carriers that may have pending applications for operating authority; (2) passenger carriers shown as inactive because their authority was revoked for failure to maintain evidence of the required minimum levels of financial responsibility; (3) private motor carriers of passengers; or (4) carriers which also operate larger vehicles, as well as smaller vehicles. Therefore, the agency believes its estimate of 1,843 motor carriers of passengers is a reasonable estimate of the number of entities that will be subject to this rule.

This final rule is the last in a series of rulemaking actions intended to improve the safety of operation of vehicles designed or used to transport between 9 and 15 passengers, for compensation, in interstate commerce. After reviewing the public comments received in response to previous rulemaking notices in this series, and completing an analysis of accident data, the agency continues to believe that it is appropriate to limit the applicability of the rule to those motor carriers that are most likely to have safety performance problems. Therefore, this rule involves 1,843 out of the 14,000 small entities that the agency is authorized to regulate under section 212 of MCSIA.

The rulemaking series mentioned above began with the August 5, 1998 (63 FR 41766) ANPRM in which the agency requested public comment from all interested parties concerning the potential impact of amending the definition of "commercial motor vehicle" to make the FMCSRs applicable to the operation of small passenger-carrying CMVs. The agency specifically asked for comments concerning the types and numbers of passenger carriers that would be covered by the safety regulations under the revised definition of CMV provided in section 4008(a) of TEA-21. At that time, we indicated that due to the preliminary nature of the ANPRM and the lack of information about the potential costs of the rulemaking, the agency could not evaluate the potential regulatory changes on small entities. The agency solicited comments, information, and data on these potential impacts on small entities.

On September 3, 1999, the agency published an interim final rule (64 FR 48510) and a NPRM (64 FR 48518) based on the comments received in response to the ANPRM. The agency used the interim final rule to adopt the statutory definition of CMV provided by TEA-21, and temporarily exempt the operation of small passenger-carrying vehicles from all of the FMCSRs pending completion of a companion rulemaking that would help the agency gather additional information about the entities operating vehicles designed or used to transport between 9 and 15 passengers. The exemption was necessary because the agency viewed section 4008(a) of TEA-21 as a mandate either to impose the FMCSRs on previously unregulated smaller capacity vehicles, or to exempt through a rulemaking proceeding some or all of the operators of such vehicles. The statute provided that operators of small passenger-carrying vehicles would automatically become subject to the FMCSRs unless the agency, through a rulemaking proceeding, determines that it is appropriate to exempt such operators from the safety regulations.

While none of the commenters responded to the request for information about potential impacts of the rulemaking on small entities, the TLPA estimated that if the agency made the FMCSRs applicable to the operation of small passenger-carrying vehicles, approximately 14,000 companies, 125,000 vehicles, and 165,000 drivers would be covered. The agency reviewed its database of for-hire interstate motor carriers of passengers to determine whether TLPA's estimate was reasonable. At that time, we indicated there were 1,636 for-hire motor carriers of passengers with active operating authority that had on file with the agency proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. Recognizing that TLPA's estimate included a wide range of passenger-carrying operations that far exceeded the limited number of carriers with active operating authority, the agency stated that it could not confirm the accuracy of the number.

The September 3, 1999 NPRM proposed that each motor carrier operating small passenger-carrying vehicles submit a Motor Carrier Identification Report (FMCSA Form MCS-150), maintain an accident register, and mark their CMVs with the motor carrier identification number assigned by the agency (64 FR 48518). The agency stated that this would provide it with information about the number of passenger carriers, their business locations, and the number of drivers employed and vehicles operated. We believed that the proposal could affect a substantial number of small entities, but would not have a significant impact on them. The agency stated that if the TLPA's estimate of 14,000 interstate motor carriers operating CMVs designed or used to transport 9 to 15 passengers was accurate, and most or all of these businesses are classified as small businesses by

SBA, the rulemaking would affect up to 14,000 small entities. The agency provided examples of the potential costs to mark each vehicle, in accordance with 49 CFR 390.21, with a worse case scenario of a one-time cost of $420 for a carrier with a fleet of 20 vehicles.

With the enactment of MCSIA, the agency was required to take a more aggressive regulatory approach and impose safety requirements on: (1) commercial vans referred to as "camionetas," and (2) those commercial vans operating in interstate commerce outside of commercial zones that have been determined to pose serious safety risks. Therefore, the agency was required to continue the series of rulemaking actions in the absence of definitive industry characteristic and safety performance data, including data concerning the potential impact on small businesses that would be made subject to the FMCSRs.

On January 11, 2001, FMCSA issued a final rule adopting the statutory definition of CMV as revised by section 4008 of TEA-21, and requiring motor carriers operating small passenger-carrying vehicles to submit the identification report, mark their vehicles, and maintain an accident register (66 FR 2756). On the same day, in response to section 212 of MCSIA, the agency issued an NPRM (66 FR 2767) proposing that motor carriers operating vehicles designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce comply with the safety regulations when they are directly compensated for such services, and the transportation of any of the passengers covers a distance greater than 75 air miles (86.3 statute miles).

FMCSA indicated that in order to avoid underestimating the potential impact of the rule on small entities, it estimated that 1,648 passenger carriers would be subject to the proposed requirements. This estimate was based on the number of for-hire motor carriers of passengers with active authority to operate CMVs with a seating capacity of 15 passengers or less. The agency argued that using the estimate of 1,648 carriers from the database of motor carriers of passengers provided a reasonable estimate of the number of entities that could be subject to the proposed rules. The agency estimated that the costs per carrier would be $6,200 for the first year the requirements are in effect, and $6,100 per year thereafter, if the costs are distributed evenly among the carriers.

FMCSA estimated that the costs per carrier associated with the NPRM would, on average, be 2.2 percent of their revenues based on data from the SBA's 1997 "Employer Firms, Employment and Estimated Receipts by Employment Size of Firm" tables. The agency reviewed revenues for motor carriers in the intercity and rural bus transportation segment of the industry. The SBA data indicated there are 145 firms in this category with less than 20 employees – the 20-employee threshold was chosen by FMCSA to be consistent with its estimate of the average number of drivers likely to be employed by the 1,648 for-hire passenger carriers. These 145 carriers had combined revenues of $41,793,000. The average revenues were considered by dividing the combined revenues by the total number of firms, or $288,227 in revenues per year for each carrier.

FMCSA made a preliminary determination that the proposed rule would not affect a substantial number of small entities because it would be applicable to only a fraction of the 14,000 entities operating 9- to 15-passenger vehicles for compensation. However, the agency recognized that the NPRM would have a significant impact on some of the small entities, especially in those cases where the profit margins are approximately 2.2 percent or less. The agency indicated that there is a possibility for failure of some small passenger-carrying CMV operations, especially those with profit margins of 2.2 percent or less. Because it was limiting the applicability of the rules to only a fraction of the universe of eligible small entities (thus minimizing the overall impact), and the estimated costs of the rule would be 2.2 percent of the revenues of the affected small entities, the agency did not believe that a more comprehensive analysis was needed to ensure compliance with the Regulatory Flexibility Act. This was particularly in view of the fact that the agency was statutorily required to regulate operators of 9 to 15 passenger vehicles and had exercised its discretion, as limited by MCSIA, to minimize the impact on small entities.

After publication of the January 11, 2001 NPRM, the agency increased its estimate of the potential costs of the rule for small entities based on: (1) a revision of the estimated information collection burden for driver records of duty status; (2) a correction of the estimate of the costs for medical examinations for drivers; and (3) consultation with SBA about the number of small businesses and their revenues.

First, the agency revised the estimated costs associated with the information collection burden for drivers' records of duty status, and submitted the revised estimate to OMB for approval. The agency estimated that the information collection burden for the records of duty status (required by 49 CFR Part 395) for the operators of 9 to 15 passenger vehicles would be 137,250 hours, based on an estimated 18,300 drivers being subject to the requirements. Using the new estimates, approved by OMB [OMB Control No. 2126-0001] on information collection burden for the records of duty status, and applying the burden per driver and carrier to the entities that would operate small passenger-carrying CMVs, the agency now believes the additional burden would be 836,000 annual burden hours, for approximately 22,000 drivers. The result of the increased estimate of the annual burden hours for completing and retaining the records of duty status, and an increase in the number of drivers that would be subject to the hours of service rules, is an increase from $2,539 per carrier per year for such records to $7,012 per carrier per year.

FMCSA also revised its estimates of the costs for medical examinations of drivers. The agency's previous calculations included an error resulting in an estimate of $1,718 per carrier per year. A correction of the error, plus a revision of the estimate of the number of drivers yields an estimate of $3,844 per carrier per year for medical examinations.

As indicated earlier, FMCSA estimates that the sum of all estimated costs of requiring operators of small passenger-carrying CMVs to comply with 49 CFR parts 391, 395, and 396 is approximately $23,850,000 for the first year and $20,184,234 per year thereafter. If the costs of the rulemaking are distributed evenly among these 1,843 motor carriers, the costs per carrier would be approximately $12,940 for the first year the requirements are in effect, and a little more than $10,952 per year thereafter.

A summary of the estimated first-year costs per motor carrier is presented below:

Summary of First-Year Costs Per Motor Carrier to Comply with the FMCSRs
$3,844 for medical exams
$102 for driver qualifications files ($35 subsequent years)
$7,012 for hours-of-service recordkeeping
$1,982 for inspection, repair, and maintenance
Total: $12,940

The actual costs each individual fleet would experience depend on the number of drivers employed and the number of small passenger-carrying CMVs operated. The above estimates are intended to serve as a baseline of 10 CMVs per fleet and about 11 drivers per business. Driver-related costs, such as driver qualifications and hours-of-service, for each business would decrease or increase as the number of drivers employed decreases below the baseline or increases above the baseline. The same holds true for vehicle-related costs.

In order to better determine the potential impact on small businesses, FMCSA met with representatives of SBA. As a result of that meeting, the FMCSA reviewed the U.S. Department of Commerce's 1997 Economic Census, Transportation and Warehousing (Publication No. EC 97T48S-LS, Issued August 2000) to better determine the revenues of businesses under the NAICS subsector 485, which covers transit and ground transportation, and more accurately assess the number of small entities based on SBA's $6,000,000 threshold for defining a small business in the passenger transportation industry.

For businesses covered by NAICS code 4852, interurban and rural bus transportation, the 1997 census data indicate there are 407 firms with combined revenues of $1,147,432,000. For the purposes of this analysis, the revenues for the businesses in this group were divided by the number of firms resulting in an estimate of $2,819,243 in revenues per year for each carrier [$1,147,432,000/407 firms = $2,819,243].

The agency also considered businesses covered by NAICS code 4853, taxi and limousine service. The 1997 census data indicate there are 6,418 firms with combined revenues of $3,154,521,000. For purposes of this analysis, the revenues for businesses in this group were also divided by the number of firms resulting in an estimate of $491,511 in revenues per year for each carrier [($3,154,521,000/6,418) = $491,511].

Based on the estimates above for the revenues per firm for interurban and rural bus transportation businesses, and revenues per firm for taxi and limousine service businesses, FMCSA believes that most, if not all, of the firms in these categories appear to be small businesses based on SBA's $6,000,000 threshold.

The costs per carrier associated with this rule would, on average, be approximately 0.45 percent of the revenues for interurban and rural bus services [($12,940 costs per carrier)/($2,819,243 revenues per carrier) x 100 = 0.45 percent], and 2.6 percent of the revenues for taxi and limousine services [($12,940 costs per carrier)/$491,511 revenues per carrier) x 100 = 2.6 percent].

For interurban and rural bus services with a profit margin greater than 0.45 percent, the new rule will decrease their profits but the businesses would maintain some level of profit. For bus services with profit margins of 0.45 percent or less, the rule could result in the failure of the business. Likewise, for taxi and limousine services with a profit margin greater than 2.6 percent, the rule would decrease their profits but the businesses would maintain some level of profit. For taxi and limousine businesses with profit margins of 2.6 percent or less, the rule could result in failure of the business.

FMCSA does not have data on the revenues or profit margins of the 1,843 motor carriers likely to be impacted by the rule or more precise information about their revenues. Also, the agency does not have sufficient data about these motor carriers to determine the distribution of drivers and vehicles, such as the number of carriers with 1 to 5 vehicles, the number of carriers with 6 to 10 vehicles, the number of carriers with 11 to 20 vehicles, and similar data for the number of drivers, to make more precise its estimates concerning revenues. However, the agency believes it is appropriate to consider all 1,843 motor carriers of passengers likely to be affected by this rulemaking to be small entities to avoid underestimating the impact this rule will have on them. The agency believes the estimates presented above are reasonable given the limited information available about this segment of the motor carrier industry. Therefore, the agency has made a determination that this rule would not affect a substantial number of small entities. However, it could have a significant impact on some of these 1,843 small entities, especially in those cases where the profit margins are approximately 2.6 percent or less.

FMCSA has considered the comments to the previous rulemaking documents concerning the regulation of small passenger-carrying CMVs, and believes this group of motor carriers provides an important service to its clients. These motor carriers provide services to individuals for whom motor coach services are not available, those who may not be able to afford to use motor coach operators, or individuals who choose, for whatever reason, not to use motor coach operators for their intercity travel. The agency believes the industry is very important to those who rely on it. There is a possibility for failure of some small passenger-carrying CMV operations, especially those with profit margins of 2.6 percent or less. However, the number of failures among the estimated 1,843 motor carriers operating small passenger-carrying CMVs is expected to be small. Therefore, the agency believes there could be a small degree of disruption in the services provided by small passenger-carrying CMV operations that are not capable of putting into place the safety management controls necessary to achieve compliance with 49 CFR parts 390, 391, 392, 393, 395, and 396.

FMCSA has considered other regulatory alternatives as described earlier, and determined that this action is necessary to fulfill section 212 of the MCSIA and respond to the safety problem indicated by the FARS and General Estimates System (GES) data. It is unlikely that a rule establishing less stringent requirements would have the same potential for improving the safety of operations of these CMVs.

Accordingly, FMCSA has considered the economic impacts of the requirements on small entities and certifies that this rule will not have a significant economic impact on a substantial number of small entities.